

## Phil 203: Logic in Law

Fall 2022, MWF 2:00–2:50pm  
Cesar E. Chavez Building 405

Instructor: Ding (they/them<sup>1</sup> and she/her)

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Office: Social Sciences 138

Office hours: M 3:00–4:30pm, and by appointment

### 1. Course overview and objectives

This course examines logical reasoning and conceptual analysis in the law, with a focus on the U.S. Supreme Court's interpretation of the equal protection and due process requirements of the Fourteenth Amendment. Topics will include constitutional interpretation, *stare decisis*, the shadow docket, racial discrimination, sex discrimination, reproductive rights, physician-assisted suicide, and LGBTQ+ rights.

### 2. Expected learning outcomes

My expectations are, at the conclusion of this course, you will be able to

1. Charitably interpret and critically assess philosophical arguments in the law;
2. Compose a well-reasoned, original argumentative essay critically examining a U.S. Supreme Court opinion;
3. Discuss how philosophical reflection and logical reasoning may shed light on contested legal and social issues in a divided contemporary society such as the United States;
4. Discuss how conceptual tools may help to clarify and express minority experiences that are otherwise masked by oppressive social structures.

### 3. Required texts

We will be using an open-access casebook:

- Ruthann Robson, *Liberty, Equality, and Due Process: Cases, Controversies, and Contexts in Constitutional Law*, 3d ed. (2021), <https://www.cali.org/books/liberty-equality-and-due-process-cases-controversies-and-contexts-constitutional-law>. (The pdf version is available at no cost.)

All other required readings will be made available digitally through D2L. If there are any barriers (technical, financial, etc.) that make it difficult for you to access any of the readings, please don't be afraid to let me know.

### 4. Assessment

Participation	20%
Midterm and final essays	50%
Final exam	30%

All required assignments must be completed in order to pass this course. **An F received on any work due to academic dishonesty is grounds for an F in the course.**

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1. If you are not familiar with the use of “they” as a singular pronoun, I encourage you to check out this helpful guide from the APA Style blog: <https://apastyle.apa.org/blog/singular-they>.

#### 4.1. Letter grades

The University of Arizona Standard Letter Grade Scheme will apply:

A	90% and above	D	60%–69.9%
B	80%–89.9%	E/F	59.9% and below
C	70%–79.9%		

Requests for incomplete (I) or withdrawal (W) must be made in accordance with university policies, which are available at <http://catalog.arizona.edu/policy/grades-and-grading-system>.

#### 4.2. Participation

In approaching a philosophical issue, we will often find ourselves in the middle of a long conversation among many different authors. A hallmark of what we do in philosophy is the way we participate in this conversation and position ourselves in relation to these authors: We are not outside observers just here to report what each author has said and perhaps to summarize some of points of agreement and disagreement; rather, we are equal parties to the conversation—just like everybody else. In this sense, it's helpful to think of philosophy classes not as where you come to be lectured about particular philosophical views, but as where we gather to *do philosophy together*, to contribute our own insights to ongoing philosophical conversations.

Participation in philosophy courses also serves a wide range of pedagogical purposes: class discussions help students make sense of difficult ideas and arguments in the text; they help students learn to explain and apply concepts, analyze and assess arguments, and formulate and respond to worries and objections; in addition, they contribute to other students' learning experience by helping to build a vibrant, mutually supportive classroom environment that encourages questions, exchange of ideas, and philosophical reflection.

You are expected to read the assigned texts *carefully* and *critically* in advance of each class (remember to bring a copy to class with you as we will often look at difficult passages together). It's useful to keep in mind that philosophical writing is, at bottom, *argumentative*—that is, its goal is to *defend* or *criticize* a particular view. As you do the readings, be sure to:

- Keep track of what the author says they mean by a particular term or distinction, and take note of terms and distinctions that don't quite make sense to you.
- Identify the view the author is defending and the argument they are offering in support of their view (be careful to distinguish passages where the author is speaking for themselves and where they are explaining another author's view or considering objections!), and write down thoughts and questions in the margin as you react to each step in the argument.
- Ask yourself if you think what the author is saying is not only plausible but well-argued. If not, think about why not: Is it because the author's argument relies on a false premise, or is it because the author's reasoning is fallacious? Is there a more plausible or more arguable way of formulating the point the author hopes to make? Are there countervailing considerations, alternative positions, or further complications that the author fails to take into account? Even if you agree with the author, try to anticipate objections that other readers may reasonably raise and think about how you can respond to them on the author's behalf.

Class participation will make up 20% of your final grade.

#### 4.3. *Midterm and final essays*

You will be asked to write a midterm essay and a final essay for this class. Each essay should be 4–5 pages long, and I will distribute instructions two weeks in advance of the due date.

The better of your two essays will make up 30% of your final grade, and the other one 20%.

#### 4.4. *Final exam*

There will be a comprehensive final exam consisting of short answer and short essay questions. It is scheduled for **Friday, December 9, from 1 to 3pm** in our usual classroom. If you have another exam scheduled for the same time, please contact me as soon as you can to arrange for a make-up.

The final exam will make up 30% of your final grade.

### 5. **Excused absences**

Please email me if there is a reason you can't come to class, but you *don't* need to show me any kind of documentation. This is an honor system, and I trust you not to abuse it—all I ask is you also be flexible and considerate when you are in a position of power to do so.

- The UA policy concerning class attendance, participation, and administrative drops is available at <http://catalog.arizona.edu/policy/class-attendance-participation-and-administrative-drop>.
- The UA policy regarding absences for any sincerely held religious belief, observance or practice will be accommodated where reasonable: <http://policy.arizona.edu/human-resources/religious-accommodation-policy>.
- Absences preapproved by the UA Dean of Students (or the Dean's designee) will be honored; see <http://policy.arizona.edu/employmenthuman-resources/attendance>.

### 6. **Late assignments, extensions, and make-ups**

No late assignments will be accepted, but an extension will ordinarily be granted as long as you (1) have a clear plan for completing the assignment and (2) let me know your plan by email **no later than 6 hours before the deadline** (unless the delay is justified). Likewise, there is *no* need to show me any kind of documentation.

As an instructor, I always appreciate students asking for extensions ahead of time when possible. Make-ups for missed assignments after the fact are generally disfavored, and will be granted only to accommodate emergencies and other unexpected circumstances, such as physical (including mental) health, child care, family emergencies, and military duty. We can always work something out, but it's important that you contact me as soon as you can.

### 7. **Academic integrity**

#### 7.1. *Code of Academic Integrity*

Students are encouraged to share intellectual views and discuss freely the principles and applications of course materials. However, graded work/exercises must be the product of independent effort unless otherwise instructed. Students are expected to adhere to the UA Code of Academic Integrity as described in the UA General Catalog. See <http://deanofstudents.arizona.edu/academic-integrity/students/academic-integrity>.

### 7.2. *Plagiarism*

**I view plagiarism as a very serious violation of the university's Code of Academic Integrity, and you should as well.** I strongly encourage you to review this helpful guide prepared by the university library: <https://new.library.arizona.edu/research/citing/plagiarism>. I understand different instructors may draw the line somewhat differently; if you have any questions about what constitutes plagiarism for the purposes of our course, please don't hesitate to ask me.

### 7.3. *Inappropriate use of class notes and course materials*

**Disseminating class notes or course materials beyond the classroom community, such as selling them to other students or to a third party for resale, is strictly prohibited.** Violations to this rule are subject to the Code of Academic Integrity and may result in course sanctions. Additionally, students who use D2L or UA email to sell or buy such notes or course materials are subject to Student Code of Conduct violations for misuse of student email addresses. This misconduct may also constitute copyright infringement.

## 8. (Lack of) diversity in philosophy

Unfortunately, philosophy as an institutionalized discipline is remarkably white, cis male, straight, able-bodied, and middle-class. This lack of diversity is often apparent just from the topics and authors typically taught in introductory philosophy courses. However, philosophy as a whole is becoming more and more diverse thanks to the efforts of several generations of philosophers. As a philosophy student, you can also help the profession address its diversity and inclusiveness problems by seriously engaging with minority authors and supporting your fellow minority students.

The American Philosophical Association (APA) has a useful handout for minority undergraduate students in philosophy, which you can read here: [https://www.apaonline.org/resource/resmgr/diversity/Advice\\_for\\_Undergrads.pdf](https://www.apaonline.org/resource/resmgr/diversity/Advice_for_Undergrads.pdf).

A valuable local opportunity is the Arizona Feminist Philosophy Graduate Conference organized annually by graduate students at the UA Department of Philosophy. The conference takes place in the spring semester. It brings together graduate students working on feminist issues from around the country and the world. You can find more information and watch recordings of past talks at <https://femphilaz.com>.

## 9. Tentative schedule

### *Introduction*

Aug 22 (M) Course overview

- U.S. Constitution, Article III and Amendments I–XI, XIII–XV, XIX, <https://www.govinfo.gov/content/pkg/CDOC-112hdoc129/pdf/CDOC-112hdoc129.pdf>
- The Equal Rights Amendment, <https://catalog.archives.gov/id/7455549>

Aug 24 (W) Deliberations at the Supreme Court

- SCOTUSblog, “Supreme Court Procedure,” <https://www.scotusblog.com/reference/educational-resources/supreme-court-procedure>
- Justice Breyer's crash course on Supreme Court procedure, video, 00:00–24:05, <https://youtu.be/i9RPOQjIGKQ>

Aug 26 (F) The shadow docket

- Stephen Vladeck, Testimony before the Committee on the Judiciary, U.S. Senate, Sept. 29, 2021, <https://www.judiciary.senate.gov/imo/media/doc/Vladeck%20testimony1.pdf>
- Aug 29 (M) Deductive reasoning and conceptual analysis
  - Russ Shafer-Landau, “Moral Reasoning,” in *A Concise Introduction to Ethics* (OUP, 2020)
- Aug 31 (W) Deductive reasoning and conceptual analysis (cont.) (no new readings)

### *Racial discrimination*

- Sep 2 (F) Separate but equal?
    - *Plessy v. Ferguson* (1896)
  - Sep 5 (M) Labor Day (no class)
  - Sep 7 (W) Toward strict scrutiny
    - *Hirabayashi v. United States* (1943)
    - *Korematsu v. United States* (1944)
  - Sep 9 (F) Dismantling *Plessy*: Education
    - *Brown v. Board of Education* (1954)
    - *Bolling v. Sharpe* (1954)
  - Sep 12 (M) Dismantling *Plessy*: Marriage
    - *Loving v. Virginia* (1967)
  - Sep 14 (W) Direct and indirect discrimination
    - *Yick Wo v. Hopkins* (1886)
    - *Washington v. Davis* (1976)
  - Sep 16 (F) The original meaning of the 14th Amendment?
    - Antonin Scalia, “Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws,” in *A Matter of Interpretation: Federal Courts and the Law*, ed. Amy Gutmann (Princeton UP, 1997), pp. 14–25, 37–47
  - Sep 19 (M) The original meaning of the 14th Amendment? (cont.)
    - Ronald Dworkin, “Comment,” in Gutmann, *A Matter of Interpretation*, pp. 115–27
    - Antonin Scalia, “Response,” in Gutmann, *A Matter of Interpretation*, pp. 144–49
  - Sep 21 (W) Catch-up day
- Midterm essay assigned**

### *Sex discrimination*

- Sep 23 (F) Early cases
  - *Bradwell v. Illinois* (1873)
  - *Muller v. Oregon* (1908)
  - *Goesaert v. Cleary* (1948)
  - *Hoyt v. Florida* (1961)
- Sep 26 (M) Jane Crow

- Pauli Murray and Mary O. Eastwood, “Jane Crow and the Law: Sex Discrimination and Title VII,” *George Washington Law Review* (1965), pp. 232–42
- Sep 28 (W) Toward intermediate scrutiny
  - *Reed v. Reed* (1971)
  - *Frontiero v. Richardson* (1973)
  - *Craig v. Boren* (1976)
- Sep 30 (F) Developing intermediate scrutiny: All-women nursing school
  - *Mississippi University for Women v. Hogan* (1982)
- Oct 3 (M) Developing intermediate scrutiny: All-men military school
  - *United States v. Virginia* (1996)
- Oct 5 (W) *Real* sex differences?
  - *Geduldig v. Aiello* (1974)
  - *Michael M. v. Superior Court of Sonoma County* (1981)
  - *Rostker v. Goldberg* (1981)
  - *Nguyen v. Immigration and Naturalization Services* (2001)
  - *Sessions v. Morales-Santana* (2017)
- Midterm essay due at the beginning of class**
- Oct 7 (F) The nature and wrong of discrimination: Classification or subordination?
  - Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale UP, 1979), pp. 101–27
- Oct 10 (M) The legally relevant meaning of “Sex”: Biological or social?
  - MacKinnon, *SHWW*, pp. 127–58
- Oct 12 (W) Intersectional discrimination: Sex and race
  - Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum* (1989)
- Oct 14 (F) Intersectional discrimination: Sex and gender identity
  - *Doe v. Boyertown Area School District*, 897 F.3d 518 (3d Cir. 2018)
  - Note, “Doe ex rel. Doe v. Boyertown Area School District,” *Harvard Law Review* (2019)
- Oct 17 (M) Intersectional discrimination: Sex and gender identity (cont.)
  - *Iglesias v. Federal Bureau of Prisons*, No. 19-cv-00415 (S.D. Ill. Dec. 27, 2021)
- Oct 19 (W) Catch-up day
- Life and death*
- Oct 21 (F) Unenumerated rights
  - *Griswold v. Connecticut* (1965)
- Oct 24 (M) Grounding the right to abortion: Privacy and patient-physician autonomy
  - *Roe v. Wade* (1973)
  - *Doe v. Bolton* (1973)
- Oct 26 (W) Affirming in name, undermining in substance
  - *Planned Parenthood v. Casey* (1992)

- Oct 28 (F) The viability line  
 – Judith Jarvis Thomson, “A Defense of Abortion,” *Philosophy & Public Affairs* (1971)
- Oct 31 (M) Grounding the right to abortion: Gender equality?  
 – Ruth Bader Ginsburg, “Some Thoughts on Autonomy and Equality in Relation to *Roe v. Wade*,” *North Carolina Law Review* (1985)
- Nov 2 (W) From life to death  
 – In-class viewing: *How to Die in Oregon* (2011), 107 min
- Nov 4 (F) Death with dignity: Equal protection and due process  
 – *Cruzan v. Director, Missouri Department of Health* (1990)  
 – Ronald Dworkin, Thomas Nagel, Robert Nozick, John Rawls, Thomas Scanlon, and Judith Jarvis Thomson, “Assisted Suicide: The Philosophers’ Brief” (1996)
- Nov 7 (M) No constitutional right to die?  
 – *Washington v. Glucksberg* (1997)
- Nov 9 (W) No constitutional right to die? (cont.)  
 – *Vacco v. Quill* (1997)
- Nov 11 (F) Veterans Day (no class)
- Nov 14 (M) Purported women’s health regulations  
 – *Whole Woman’s Health v. Hellerstedt* (2016)
- Nov 16 (W) Undue burden: Balancing or threshold test?  
 – *June Medical Services v. Russo* (2020)
- Nov 18 (F) Texas’s S.B. 8  
 – Will Baude and Dan Epps, “The Lightning Docket,” *Divided Argument*, podcast, 67 min, <https://www.dividedargument.com/episodes/the-lightning-docket>
- Nov 21 (M) The beginning of the end?  
 – *Dobbs v. Jackson Women’s Health Organization* (2022)

**Final essay assigned**

*Slippery slope to same-sex marriage?*

- Nov 23 (W) Constitutional right to sexual privacy?  
 – *Bowers v. Hardwick* (1986)
- Nov 25 (F) Thanksgiving (no class)
- Nov 28 (M) Overruling *Bowers*: Due process or equal protection?  
 – *Lawrence v. Texas* (2003)
- Nov 30 (W) Defending marriage?  
 – *United States v. Windsor* (2013)
- Dec 2 (F) A win for the Constitution?  
 – *Obergefell v. Hodges* (2015)

- Dec 5 (M) Catch-up day

**Final essay due at the beginning of class**

*Conclusion*

Dec 7 (W)      Last day of class  
Dec 9 (F)      **Final exam, 1–3pm, in our usual classroom**

## 10. Respect, support, and care for one another

### 10.1. *Materials in this course*

Since many of the issues we will cover in this course are not only intellectually but also *personally* relevant, you might find it difficult to read and discuss certain course materials. I want to acknowledge that. It's perfectly understandable.

It's therefore important that we *respect, support, and care for* one another throughout the course. Please always feel free to talk to me if you anticipate certain topics will be especially difficult for you, or if you think the way they get discussed in the class is disrespectful or otherwise problematic.

### 10.2. *How to respect, support, and care for one another*

Here are some concrete examples of how you can respect, support, and care for your classmates and instructor:

- |             |  |
|-------------|--|
| CLASS       | – Value everyone's contribution to class discussions;  |
| DISCUSSIONS | – Disagree in a way that takes other people's ideas seriously and sincerely;   |
|             | – Challenge remarks, jokes and examples that are racist, sexist, heterosexist, cis-sexist, misogynistic, transmisogynistic, xenophobic, ableist, ageist, classist, etc.;   |
|             | – Keep discussions inclusive by avoiding talking to only a few specific people.  |
| CLASSROOM   | – Try to remain quiet if you have to arrive late or leave early;   |
| BEHAVIOR    | – Avoid starting to pack things up until class is completely over;   |
|             | – Listen attentively and avoid distracting or interrupting behavior, such as chatting with the person next to you or checking your phone.  |
| GENDER      | – Use the pronouns and name you are asked to when you refer to a person;   |
| IDENTITY &  | – Avoid assuming a person's pronouns, gender identity or sexual orientation based  |
| SEXUAL      | on their appearance, voice or name;  |
| ORIENTATION | – Be careful not to disclose anyone's gender identity or sexual orientation (i.e., out them) without their permission, even if they are already out in the classroom—it can put lives in danger;   |
|             | – Never inquire about anyone's genitalia, deadname, “before” photos, medical history, assigned gender at birth, sex life, and so on;   |
|             | – Use inclusive language (for helpful examples, see <a href="https://www.apaonline.org/page/nonsexist">https://www.apaonline.org/page/nonsexist</a> and <a href="https://transjournalists.org/style-guide">https://transjournalists.org/style-guide</a> ). |

If you feel any aspect of this course makes it difficult for you to participate fully, I want to know. This is *very* important to me.

### 10.3. *University statements on discrimination, harassment, and threatening behavior*

To foster a positive learning environment, students and instructors have a shared responsibility. We want a safe, welcoming, and inclusive environment where all of us feel comfortable with each other and where we can challenge ourselves to succeed. To that end, our focus is on the tasks at hand and

not on extraneous activities (e.g., texting, chatting, reading a newspaper, making phone calls, web surfing, etc.).

The University of Arizona is committed to creating and maintaining an environment free of discrimination. In support of this commitment, the University prohibits discrimination, including harassment and retaliation, based on a protected classification, including race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity, or genetic information. For more information, including how to report a concern, please see <http://policy.arizona.edu/human-resources/nondiscrimination-and-anti-harassment-policy>.

Our classroom is a place where everyone is encouraged to express well-formed opinions and their reasons for those opinions. We also want to create a tolerant and open environment where such opinions can be expressed without resorting to bullying or discrimination of others.

The UA Threatening Behavior by Students Policy prohibits threats of physical harm to any member of the University community, including to oneself. See <http://policy.arizona.edu/education-and-student-affairs/threatening-behavior-students>.

## 11. Student support resources

CAMPUS	– Campus Health: <a href="https://health.arizona.edu">https://health.arizona.edu</a>
HEALTH	– Counseling and Psych Services (CAPS): <a href="https://health.arizona.edu/counseling-psych-services">https://health.arizona.edu/counseling-psych-services</a> – Mental Health Tools from CAPS: <a href="https://health.arizona.edu/mental-health-tools">https://health.arizona.edu/mental-health-tools</a>
CRISIS	– National Suicide Prevention Lifeline: call 800-273-TALK (8255)
RESOURCES	– National Sexual Assault Hotline: call 800-656-HOPE (4673) or chat online (English and Spanish) at <a href="https://www.rainn.org/resources">https://www.rainn.org/resources</a> – Love Is Respect (dating abuse helpline for youth between 13 and 26): call 866-331-9474, text “LOVEIS” to 22522, or chat online at <a href="https://www.loveisrespect.org/get-help">https://www.loveisrespect.org/get-help</a> – Trevor Lifeline (for LGBTQ+ youth under 25): call 866-488-7386, text “START” to 678-678, or chat online at <a href="https://www.thetrevorproject.org/get-help-now">https://www.thetrevorproject.org/get-help-now</a> – Trans Lifeline (operators are all trans/nonbinary people): call 877-565-8860 (English and Spanish) – CAPS Crisis Resources, Hotlines and Apps: <a href="https://health.arizona.edu/crisis-resources-and-hotlines">https://health.arizona.edu/crisis-resources-and-hotlines</a>
STUDENT	– Dean of Students Office Student Assistance Services: <a href="https://deanofstudents.arizona.edu/support/student-assistance">https://deanofstudents.arizona.edu/support/student-assistance</a>
ASSISTANCE	– Survivor Advocacy: <a href="https://survivoradvocacy.arizona.edu">https://survivoradvocacy.arizona.edu</a> – Fostering Success: <a href="https://fosteringssuccess.arizona.edu">https://fosteringssuccess.arizona.edu</a>
ADVISING	– Find your philosophy advisor: <a href="https://philosophy.arizona.edu/advising">https://philosophy.arizona.edu/advising</a> – Become a philosophy major: <a href="https://philosophy.arizona.edu/why-study-philosophy">https://philosophy.arizona.edu/why-study-philosophy</a>
WRITING	– Think Tank Writing Center: <a href="https://thinktank.arizona.edu/writing-center">https://thinktank.arizona.edu/writing-center</a> – Writing Skills Improvement Program: <a href="https://wsip.arizona.edu">https://wsip.arizona.edu</a>

- FOOD BANK – Campus Pantry: <https://campuspantry.arizona.edu>
- CHILD CARE – UA Childcare Choice Program for Students: <https://lifework.arizona.edu/programs/childcare-choice/student>
- LGBTQ+ – List of Resources from the Office of LGBTQ Affairs: <https://lgbtq.arizona.edu/students>
- DISABILITY – Disability Resource Center: <https://drc.arizona.edu>

## **12. Accessibility and accommodations**

At the University of Arizona, we strive to make learning experiences as accessible as possible. If you anticipate or experience barriers based on disability or pregnancy, please contact the Disability Resource Center (520-621-3268, <https://drc.arizona.edu/>) to establish reasonable accommodations.

## **13. Syllabus change**

Information contained in the course syllabus, other than the grade and absence policy, may be subject to change with advance notice, as deemed appropriate by the instructor.